

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

O. MATTHEW THOMAS,
Plaintiff,

v.

SAN FRANCISCO TRAVEL ASSOCIATION,
Defendant.

Case No. 14-cv-03043-YGR

**ORDER DENYING MOTION FOR
ATTORNEY'S FEES AND COSTS**

Re: Dkt. No. 55

This case arises out of a Section 1981 claim brought by plaintiff O. Matthew Thomas against defendant San Francisco Travel Association based on allegations that defendant refused to enter into a contractual relationship with plaintiff because of race-based discrimination. The Court granted summary judgment in favor of defendant, thereby dismissing plaintiff's claims. (Dkt. No 51.) Before the Court now is defendant's motion for attorney's fees and costs. (Dkt. No. 55.) Plaintiff filed a response (Dkt. No. 62) and a request for a continuance to find new counsel to defend against the motion (Dkt. No. 65). Defendant replied. (Dkt. No. 64.) Having carefully considered the papers submitted and the pleadings, and for the reasons set out more fully below, the Court **DENIES** defendant's motion for attorney's fees and costs.¹

Under Section 1988, in an action or proceeding under Section 1981, a court, "in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." 42 U.S.C. § 1988. Because "Congress wanted to encourage individuals to seek relief for violations of their civil rights, [Section] 1988 operates asymmetrically." *Braunstein v. Az. Dep't of Transp.*, 683 F.3d 1177, 1187 (9th Cir. 2012). District courts may award prevailing defendants only in "exceptional circumstances" where the court "finds that the plaintiff's claims are 'frivolous, unreasonable, or groundless,'" whereas prevailing plaintiffs "may receive attorney's fees as a matter of course." *Id.*²

¹ The Court adopts the Background section in its Order Denying Motion for Leave to Amend; Granting Motion for Summary Judgment. (Dkt. No. 51.)


² Frivolous in the Ninth Circuit, means that the "result is obvious" or the plaintiff's

Moreover, courts must resist the “temptation to engage in *post hoc* reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation.” *Surrell v. Cal. Water Serv. Co.*, No. 04-cv-2143, 2006 WL 1153758, at *3 (E.D. Cal. Apr. 28, 2006) (denying motion for fees despite granting summary judgment in favor of defendants) (quoting *Christianburg Garment Co. v. E.E.O.C.*, 434 U.S. 412, 421–22 (1978)). “The fact that plaintiff was unable to provide proper evidence to raise a triable issue of fact, does not mean that [his] claims were unreasonable, frivolous, or without foundation.” *Id.*

Defendant moves the Court to find that this was such an exceptional case such that defendant should be awarded attorney’s fees. However, that defendant prevailed on summary judgment is not sufficient to show that this case is so “exceptional” as to merit an award of attorney’s fees against plaintiff. Here, plaintiff was advised by his attorney, who later abandoned his case, that he had a reasonable belief that plaintiff had been discriminated against because of his race, and that that factor was, at least in part, a reason why defendant initially offered him allegedly unfavorable terms and then subsequently refused to consummate the contract. The Court is not prepared to find, given the circumstances of this case, that it falls into the “exceptional” case contemplated by the statute for awarding prevailing defendants with attorney’s fees. Accordingly, defendant’s motion for attorney’s fees and costs is **DENIED**.

IT IS SO ORDERED.

Dated: June 8, 2016


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE

arguments are “wholly without merit.” *McConnell v. Critchlow*, 661 F.2d 116, 118 (9th Cir. 1981) (citation omitted). “The terms ‘frivolous,’ ‘unreasonable,’ and ‘without foundation’ as used in this context do not have appreciably different meanings.” *Alaska Right to Life v. Feldman*, 504 F.3d 840, 852 (9th Cir. 2007) (citation omitted).